

wishes to run as an independent candidate not affiliated with any political party, for the Congressional seat at issue and to cast his vote for himself. Plaintiff Moser wanted to run as an independent candidate for the Congressional seat at issue; but after working very hard on his effort to obtain signatures for his ballot access petition, he has decided to withdraw because of the overwhelming obstacle of the number of signatures required on a severely truncated schedule and he wishes to put his support behind the independent candidacy of Plaintiff Hall, to support his campaign for the Congressional seat at issue, and to cast his vote for him as an independent candidate on the ballot.

Under Alabama's election laws, while candidates for this office representing the Democratic or Republican parties automatically get a spot on the ballot, candidates not affiliated with either of those two parties must submit ballot access signature petitions with 5,938 signatures from certifiable qualified Alabama electors and they must submit these petitions by no later than September 24, 2013.

Based upon the schedule for the Special Election, set by Alabama's Governor and announced and administered by Alabama's Secretary of State, independent candidates in Alabama for the Congressional seat at issue have 56 days to obtain and file the requisite 5,938 certified signatures instead of the approximately two years Alabama's independent candidates for this same seat ordinarily would have to obtain and file the same number of certified signatures for the Congressional seat at issue in a regular election cycle.

Plaintiffs allege that such laws violate their rights as candidates and as

voters under the First, Fourteenth, and Fifteenth Amendments to the United States Constitution.

Plaintiffs seek a declaratory judgment and injunctive relief in this action.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal Question). Plaintiffs bring this action under 42 U.S.C. § 1983. Plaintiffs also seek relief authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

2. This Court is an appropriate venue for this action pursuant to 28 U.S.C. § 1391(b).

PARTIES

3. Plaintiff James Hall is an adult resident-citizen of Alabama, residing in Stapleton, Alabama, within the boundaries of Alabama's First U.S. Congressional District, and has been at all times relevant to this lawsuit a qualified voter in the State of Alabama according to state and federal law. Plaintiff Hall is a proud United States Marine Corps veteran, with a wife and children who believes that he, his family, like-minded Americans and their interests have been excluded and ignored by the major political parties, run by an elite and exclusive political class and he wishes to change that through his election to the United States Congress as an independent candidate, promoting true American family values for his constituents.

4. Plaintiff N.C. "Clint" Moser, Jr. is an adult resident-citizen of Alabama,

residing in Mobile, Alabama, within the boundaries of Alabama's First U.S. Congressional District, and has been at all times relevant to this lawsuit a qualified voter in the State of Alabama according to state and federal law. He shares the view that the major parties do not focus on the real issues that are important to Americans and America and that fairer ballot access opportunities for independent candidates is essential.

5. Defendant Jim Bennett is, upon information and belief, an adult resident-citizen of Montgomery, Alabama. He is the Secretary of State for the State of Alabama, and as such, is charged with the general administration of the election laws and specific duties under such laws which are relevant to the issues in this lawsuit.

FACTS

6. On or about July 29, 2013, the Governor of Alabama proclaimed and Defendant publicly announced that a Special Election would be held to fill the vacancy to be created by the prospective (August 2013) retirement of the member of the United States Congress representing Alabama's First United States Congressional District prior to the completion of his term of office.

7. The Governor announced that in connection with the Special Election:

A. The primary election for the Democratic and Republican parties to select their respective candidates for the office at issue would be held on September 24, 2013;

B. Any primary runoff that is to be held for the Democratic or

Republican parties would be held on November 5, 2013; and

C. The general election for the First United States Congressional District pursuant to this Special Election is to be held on December 17, 2013.

8. Plaintiff James Hall meets all of the eligibility requirements for election to office of United States Congressman for the First United States Congressional District in Alabama, and seeks election to that office through the Special Election presently set for that office in 2013.

9. Plaintiff N. C. “Clint” Moser, Jr. meets all of the eligibility requirements for election to office of United States Congressman for the First United States Congressional District in Alabama, he intended to seek election to that office through the Special Election presently set for that office in 2013, but found the signature requirements and deadline for the submission of signature petitions to create an insurmountable obstacle for his candidacy and so he has withdrawn from that effort and now seeks to support the candidacy of Plaintiff Hall and cast his vote for him as an independent candidate.

10. Each Plaintiff seeks to vote for Plaintiff Hall with respect to the office at issue in the Special Election and to associate with others to support his candidacy.

11. Plaintiff Hall’s candidacy as an independent candidate is the vehicle by which Plaintiff Hall seeks election through the Special Election and through which both Plaintiffs seek to exercise their rights to political participation, to advocate their agenda for political purposes, and to put forward their political beliefs and points of view, as well as those of Plaintiff Hall’s constituents, and it is

the vehicle by which he and other electors seek his access to the ballot in Alabama for the Special Election.

12. Under Alabama law, only the Democratic and Republican parties are permitted to hold primary elections for the position at issue at state expense.

13. Under Alabama law, only the candidates for the Congressional seat at issue who represent the Democratic and Republican parties will be given automatic access to the ballot in the Special Election.

14. Under §§17-9-3(a)(3) and 17-13-3, *Code of Alabama*, (1975)(as amended), in order to be placed on the ballot for the Special Election, because he is an independent candidate, not affiliated with either the Democratic or Republican parties, Plaintiff Hall must obtain and file with the Defendant, by no later than September 24, 2013, the date of the first primary for the Democratic and Republican parties, the signatures of 5,938 people who the Defendant certifies to be qualified electors for the office at issue.

15. On September 24, 2013, Plaintiff Hall personally filed his ballot access signature petitions, consisting of some 316 pages with at least 2,835 signatures which he had gathered.

16. On September 25, 2013, Defendant's Director of Elections wrote to Mr. Hall acknowledging receipt of the 316 pages with 2,835 signatures, but advising him that he was 3,103 signatures short of the 5,938 signatures required for ballot access and that the Defendant would not even conduct a review to determine the number of valid signatures.

17. The Defendant advised Plaintiff Hall that, based on the number of signatures he filed, his petition was insufficient for him to be placed on the ballot as an independent candidate for the office at issue and Defendant has refused to allow Plaintiff Hall to be placed on the ballot.

18. The seat at issue, member of the U.S. House of Representatives for Alabama's First Congressional District, is an elected position for a two year term, with a new general election scheduled to fill the position every two years on the first Tuesday of November of the election year in which the position is scheduled for election.

19. Under Alabama law, independent candidates in Alabama who wish to seek the office at issue in this case, and electors who wish to promote the candidacy of an independent candidate for such office ordinarily have approximately two years to obtain and file with the Defendant, signatures from certifiably qualified electors, equal in number to three percent (3%) of the qualified electors who cast ballots for the office of Governor in the last general election for the political subdivision in which Plaintiffs seek to qualify. That number of signatures for the Special Election is equal to 5,938 certifiable signatures this year.

20. Plaintiff Hall at all relevant times used extraordinary due diligence to obtain the requisite number of certifiable signatures; but it is fundamentally unreasonable, unfair, and unconstitutional to require him to obtain and file petitions with the same number of certifiable signatures within the severely curtailed time frame applied to this Special Election.

21. On or about June 4, 2013, following the announcement of the incumbent holding the Congressional seat at issue in the Special Election that he intended to retire from the seat in August of 2013, Plaintiff Hall contacted the Defendant's office to inquire as to what a ballot action petition needed to say, so that he could create one on his own and begin trying to obtain signatures.

22. At that time, Defendant had not prepared any ballot access petition for independent or minor party candidates to use to obtain signatures for the Special Election at issue.

23. By June 7, 2013, Plaintiff Hall had created his own ballot access signature petition for the Special Election at issue and submitted it to the Defendant for approval. Plaintiff Hall contacted the Defendant's office by email and by phone on many occasions in his efforts to gain ballot access as an independent candidate in this Special Election.

24. On or about June 11, 2013, Defendant's office responded to Plaintiff Hall's proposed sample signature petition by making some changes to it. However, Defendant did not provide Plaintiff Hall with the date of the general election for the Special Election.

25. Information provided through the Defendant's website advises that a ballot access signature petition for an independent candidate for elective office in Alabama **must** state on it the date of the election at issue.

26. On July 8, 2013, Defendant's office was advised of some of the insurmountable hardships imposed on independent and minor party candidates,

given the number of signatures required and a truncated time frame. Defendant was asked how long the time period would be for such candidates to try to obtain signatures for their signature petitions.

27. Defendant's Director of Elections responded on July 11, 2013, by forwarding a sample ballot access petition which Defendant had created in response to the July 8th inquiry, without any date stated for the election at issue, notwithstanding the requirement that such a ballot access signature petition set forth the date of the election at issue to be valid.

28. Defendant's Director of Elections advised that no date for the primary or the general election for the Special Election at issue could be provided until the Governor of Alabama issued a proclamation setting such dates. Such proclamation was scheduled to be issued on or around August 15, 2013, the date previously announced as the effective date of the resignation of the incumbent House member whose seat is at issue in this Special Election.

29. On July 12, 2013, Defendant's office advised that they would notify the undersigned when a calendar for the Special Election was set; but Defendant's office never provided the undersigned with such notice.

30. Upon information and belief, based on issues raised in the pending related case, *U.S. v. Alabama*, Case Number 2:12-cv-00179-MHT-WC (Middle District of Alabama), the announcement of the calendar for the Special Election at issue was moved up from August 15, 2013 to the end of July 2013 because of the concerns raised in that case by the United States about hardships the truncated schedule for

this Special Election would cause for overseas absentee voters in this Special Election.

31. Upon information and belief, the first date on which a calendar for the primaries and general election for the Special Election at issue appeared in any public forum, was in an Order issued by Judge Thompson on July 26, 2013 in *U.S. v. Alabama*. However, as noted, the Defendant provided no notice to the undersigned, or to the Plaintiff of such calendar at any time and, upon information and belief, Defendant did not even announce or otherwise provide notice of such schedule on its website or any other public forum until on or about July 29, 2013.

32. Prior to the July 26, 2013 Order in the pending related case of *U.S. v. Alabama* (in which the Secretary was a defendant as well), Defendant was well aware of the hardships the signature requirement would cause for independent candidates because of the severely truncated schedule attending the Special Election and had express notice of such hardships and concerns on behalf of independent candidates; yet Defendant ignored such concerns and failed to bring the concerns of independent candidates and electors who wish to vote for independent candidates, or the impact of the combination of the truncated schedule and the signature requirement to the attention of the Court in that pending related case.

33. Defendant even was provided with authority from the Eleventh Circuit remanding a case in which the district court had refused to provide an accommodation for petitioning candidates whose time frame was truncated due to

a Special Election schedule, as well as the district court decision on remand, extending the time frame for obtaining signatures.

34. Defendant knows or should know that courts within the Eleventh Circuit and around the country have entered orders extending the deadline for obtaining signatures, reducing the number of signatures requirement, or both when dealing with the impact a Special Election's truncated schedule has on the ability of independent or minor party candidates to gain ballot access through signature petitions.

35. Defendant knows or should know that in light of to the impact a Special Election's truncated schedule has on the ability of independent candidates to gain ballot access and the impact the same has on electors who would like to vote for independent candidates, state legislatures within the Eleventh Circuit have removed the signature requirement altogether for independent candidates in Special Elections.

36. Until after it became clear on or about September 24, 2013 that a primary runoff election would be required, the date of the general election for this Special Election could not be known or set, according to information provided by Defendant. Now, it is clear that there will be a primary runoff for this Special Election on November 5, 2013, with the general Special Election currently scheduled for December 17, 2013.

37. No ballot access petition which complied with the requirements set forth in the official materials published by the Defendant regarding the rules and

regulations for independent candidates to gain access to the ballot access could be formulated until a date for the general election for this Special Election was established, given the requirement in Alabama that a valid access ballot signature petition **must** set forth such date on the petition itself.

38. Notwithstanding the facts, among others, that (a) no valid ballot access petition for the Special Election could be created until a date for the general Special Election had been set, (b) prospective independent candidates could not evaluate their ability to get the required number of signatures by the first primary date, as the statute requires, without knowing when the first primary would be set, and (c) Congressman Bonner could have changed his mind anytime before the date in August when his resignation was scheduled to become effective, Plaintiff Hall worked tirelessly throughout the months of June and July 2013 and all times since then to obtain signatures for his ballot access petition.

39. From the earliest possible juncture, in his efforts to obtain signatures, Plaintiff Hall has attended virtually every community event at which he believed there likely would be significant gatherings of qualified electors in order to maximize his efficiency in soliciting and obtaining signatures. These events have included charity runs, festivals, yard sales, concerts, sporting events, a gun show, and others. His efforts at some of the events were stymied by the sponsoring organizations which were not “politically friendly.”

40. Plaintiff Hall has tried to obtain signatures through networking efforts with social contacts and work contacts, asking each friend and contact to provide

as many names as possible for potential signatories and to help him gather signatures from the lists they developed for him.

41. Plaintiff Hall has visited businesses within the voting district and provided signature petitions to those businesses who were willing to post them and facilitate his collection of signatures. Many places of business refused to help; but he persevered.

42. Plaintiff Hall and his wife independently went door to door to try to obtain signatures, with disappointing results, achieving approximately 1 signature per 12 houses visited, and encountering reticence among many to get involved with a stranger in a political matter. Plaintiff Hall also found the door to door process to be most inefficient time-wise in light of this truncated schedule. Plaintiff Hall and his wife visited approximately 5000 homes in their efforts to get signatures through this door to door method.

43. For the signatures Plaintiff Hall obtained, most took a good deal of time to obtain, because of obstacles that included: overcoming the potential signatory's reticence to discuss politics, concerns about the impact signing the petition would have on the person's freedom to vote for another candidate in a primary or in the Special general election, concerns about a lack of privacy in providing personal information, the time it took to fill in the required information if the person agreed to sign, and the time the person requested to read all of the language on the petition.

44. Plaintiff Hall placed an advertisement to try to hire someone to help him

solicit signatures; but he received only one response. This did not prove to be a successful manner of proceeding and ended up costing Plaintiff Hall about \$4.00 per signature and he is a person of limited financial means.

45. Plaintiff Hall and his wife have worked tirelessly at all times during the relevant time frame to try everything reasonably possible within their means to obtain signatures and in the process they have sacrificed both family and work obligations. Plaintiff Hall has missed his children's sports practices and games, family events and his work has suffered because of the time and effort he has had to devote to his Herculean effort at trying to obtain signatures to gain access to the ballot for this Special Election. His efforts have continued unabated.

46. Plaintiff Moser also made great effort to obtain the requisite number of signatures by September 24, 2013; but he could not meet the requirement and in great frustration has abandoned his quest for ballot access for this Special Election. He supports Plaintiff Hall's efforts and wishes to cast his support and vote behind Plaintiff Hall as an independent candidate.

47. Notwithstanding his best efforts and all due diligence, Plaintiff Hall was not able to obtain and file the requisite 5,938 signatures by September 24, 2013, in order to gain access to the ballot for the Special Election. His ability to obtain at least 2,835 signatures, filling 316 pages by September 24, 2013, was a major accomplishment and is far in excess of any reasonable requirement that could pass constitutional muster in light of the State's interests and the vitally important constitutional rights at issue here.

48. Plaintiff Hall has been precluded from gaining access to the ballot for the Special Election and Plaintiffs Hall and Moser have been precluded from the opportunity to have Plaintiff Hall on the ballot as an independent candidate to cast their vote for because of the Alabama's law at issue in this Complaint.

49. The Alabama statutes regarding the filing deadlines and the number of required signatures for ballot access by independent candidates, if allowed to remain as currently set and as applied to Plaintiffs, will prevent Plaintiff Hall from gaining access to the ballot for the Special Election and Plaintiffs Hall and Moser from being able to cast their vote for Plaintiff Hall as an independent candidate.

50. Alabama's rejection of Plaintiff Hall's efforts to get on the ballot, because he filed less than 5,938 signatures by September 24, 2013, has caused tremendous harm to his candidacy, including his exclusion from campaign debates and other candidate forums and will continue to cause irreparable harm if allowed to stand and not immediately reversed. Plaintiff Hall's continuing efforts to obtain additional signatures prevent him from being able meaningfully to campaign.

51. The Alabama statutes regarding the filing deadlines and the number of required signatures for ballot access by independent candidates serve no compelling state interest, are excessively burdensome and discriminatory, and are unconstitutional on their face and as applied to the Plaintiffs and their supporters.

52. In an accommodation to voters who wish to cast their votes in the Special Election for candidates representing the Democratic and Republican parties and in accommodation to candidates in this Special Election who represent those two

parties, Defendant announced on July 29, 2013, special measures that will be provided for citizens voting from overseas, creating for them an “Instant Primary Ballot” “[d]ue to the short time frame for this election....” No such accommodation of any kind in recognition of the extraordinarily short time allotted for this Special Election has been made with respect to Plaintiffs or any candidates other than candidates representing the Democratic and Republican parties.

53. Defendant has at all times relevant to this action acted under color of state law.

54. Defendant’s actions under color of law have deprived and will continue to deprive Plaintiffs of their fundamental constitutional rights, and unless enjoined, will continue to inflict continuing and irreparable injury to the Plaintiffs.

55. Defendant’s application of the discriminatory filing deadline and number of signatures requirement provisions of Alabama law to these Plaintiffs causes and will continue to cause irreparable injury to Plaintiffs’ fundamental constitutional rights for which there is no adequate remedy at law. Plaintiffs are likely to succeed on the merits in this action, and both balance of harm and the public interest favor granting an injunction as hereinbelow requested.

CAUSE OF ACTION (42 U.S.C. § 1983)

56. Such provisions of Alabama law regarding filing deadlines and number of signatures required for ballot access, on their face and as applied to these Plaintiffs violate Plaintiffs’ rights to free speech and association guaranteed to them by the

First and Fourteenth Amendments to the United States Constitution.

57. Such provisions of Alabama law regarding filing deadlines and number of signatures required for ballot access, on their face and as applied to these Plaintiffs violate Plaintiffs' right to cast their votes effectively and to advance their political beliefs as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

58. Such provisions of Alabama law regarding filing deadlines and number of signatures required for ballot access, on their face and as applied to these Plaintiffs violate Plaintiffs' rights to equal protection of the laws guaranteed under the Fourteenth Amendment to the United States Constitution.

CLAIM FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

1. Enter a judgment declaring the Alabama state law provisions regarding filing deadlines and the number of signatures required for ballot access by independent candidates to be violative of the First and Fourteenth Amendments to the United States Constitution and otherwise unconstitutional facially and as applied to these Plaintiffs, for this Special Election;
2. Issue a preliminary and permanent injunction prohibiting the Defendant, his agents, employees, and other persons in concert with him from enforcing the state statutes at issue to prevent Plaintiff Hall from gaining access to the ballot for the Special Election and to deny Plaintiffs the right to vote for Plaintiff Hall;

3. Issue an Order extending the filing deadline and decreasing the number of signatures required for ballot access by Plaintiff for the Special Election to a date and number which are fair, reasonable, and constitutionally permissible.
4. Issue a preliminary and permanent injunction requiring the Defendant to take all appropriate steps to certify Plaintiff Hall as an independent candidate to be placed on the Special Election ballot based on the signature petitions he filed on September 24, 2013;
5. Give this case expedited treatment on this Honorable Court's docket to permit Plaintiffs to effectively campaign and to permit Plaintiff Hall to actively participate as an independent candidate in the Special Election;
6. Award Plaintiffs reasonable attorney's fees and costs of this action;
7. Grant Plaintiffs such other and further relief as this Court deems just and equitable.

Respectfully Submitted.

/s/ David I. Schoen
Counsel for Plaintiffs
(ASB-0860-O42D)

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing First Amended Complaint to be served on all counsel of record by filing the same through this Court's ECF system on this 17th day of October, 2013.

/s/ David I. Schoen
Counsel for Plaintiffs
(ASB-0860-O42D)

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